

MAINE OFFICE OF SECURITIES

In the matter of

TD AMERITRADE, INC.

Respondent.

Case No. 10-031

**ADMINISTRATIVE CONSENT ORDER**

WHEREAS, TD Ameritrade, Inc. ("Respondent" or "TD") is a broker-dealer registered in the state of Maine; and

WHEREAS, coordinated investigations into Respondent's activities in connection with certain of its sales practices regarding the marketing and sale of auction rate securities during the period of approximately January 24, 2006, through February 13, 2008, have been conducted by a multistate task force; and

WHEREAS, those coordinated investigations resulted in the simultaneous entry on July 20, 2009 of Orders on consent against Respondent by the U.S. Securities and Exchange Commission, the Office of the Attorney General of the State of New York, and the Commonwealth of Pennsylvania.

WHEREAS, Respondent has cooperated with the regulators conducting the investigations by responding to inquiries, making witnesses available, providing documentary evidence and other materials, and providing regulators with access to facts relating to the investigation; and

WHEREAS, Respondent, having advised regulators that it desires to settle and resolve the investigations, without admitting or denying the allegations therein, consents to the Maine Securities Administrator making findings and conclusions and entering this Administrative Consent Order (the "Order"); and

WHEREAS, Respondent elects to permanently waive any right to a hearing and appeal under 32 M.R.S.A. §§ 16604 and 16609 with respect to this Order;

1 NOW, THEREFORE, the Maine Securities Administrator, as administrator of the Maine  
2 Uniform Securities Act, 32 M.R.S.A. §§ 16101 through 16702, hereby enters this Order:

3 **I.**

4 **RESPONDENT**

5 1. Respondent (CRD #7870) was, at all times material herein, a New York corporation  
6 with its principal place of business at 1005 N. Ameritrade Place, Bellevue, Nebraska 68005.

7 **II.**

8 **FINDINGS OF FACT**

9 2. Paragraph I.1 is incorporated herein by reference as if set forth in its entirety.

10 3. Respondent is in the business of effecting transactions in securities in Maine as a  
11 “broker-dealer” within the meaning of Maine Uniform Securities Act, 32 M.R.S.A. § 16102(2).

12 4. Respondent has and has had customers (Customers or TD Customers) located across  
13 the United States of America, including Maine.

14 5. Prior to February 13, 2008, Respondent solicited and sold to TD Customers  
15 financial instruments known as auction rate securities (“ARS”).

16 **ARS**

17 7. ARS are bonds or preferred stocks that have interest rates or dividend yields that are  
18 periodically reset through an auction process, typically every seven (7), twenty-eight (28), or thirty-  
19 five (35) days.

20 8. ARS are usually issued with thirty (30) year maturities, but ARS maturities can  
21 range from five years to perpetuity.

22 9. ARS can be attractive investments to investors because ARS may offer slightly  
23 higher yields than various alternative products, including forms of cash alternative products.

24 10. An ARS yield is determined by the periodic auctions (commonly referred to as  
25 “Dutch” auctions) during which ARS are auctioned at par.

1           11.     ARS typically can only be bought or sold at par at one of these periodic Dutch  
2 auctions.

3           12.     Under the typical procedures for an ARS auction in effect prior to February 13,  
4 2008, an investor, including TD Customers, who wished to purchase ARS at auction, submitted a  
5 bid that included the minimum interest or dividend rate that the investor would accept.

6           13.     ARS holders could either choose to keep their securities until the next auction or  
7 submit offers to sell their ARS.

8           14.     An auction agent collected all of the bids and offers for a particular auction.

9           15.     The final yield rate at which the ARS were sold was the "clearing rate" and the  
10 clearing rate applied to that particular ARS until the next auction.

11          16.     Bids with the lowest rate and then successively higher rates were accepted until all  
12 ARS sell orders were filled.

13          17.     The clearing rate was the lowest rate bid sufficient to cover all ARS offered for sale  
14 in the auction.

15          18.     If there were not enough bids to cover the ARS offered for sale in an auction, then  
16 an auction would fail.

17          19.     In a failed auction, investors, including TD Customers, who want to sell, are not  
18 able to do so and such investors must hold their ARS until at least the next auction.

19          20.     In the event of a failed auction, an ARS issuer pays the holders a maximum rate or  
20 "penalty" rate, which is either a flat rate or a rate based on a formula set forth in the ARS offering  
21 documents.

22          21.     Penalty rates might be higher or lower than the prior clearing rate or market rates on  
23 similar products.

24          22.     Due to various market conditions in the early part of 2008, many of the broker-  
25 dealers that acted as underwriters of the ARS offerings or as lead managers for the ARS auctions  
26 stopped submitting their own bids in support of the ARS auctions.

1           23.     As a result, by February 13, 2008, the ARS market began to experience widespread  
2 auction failures, leaving ARS investors, including TD Customers throughout the United States of  
3 America, unable to sell their ARS holdings.

4           24.     On February 13, 2008, through the date of this Order, the ARS market has  
5 continued to experience widespread failures, making ARS holdings illiquid.

6           25.     Some ARS have been redeemed by their issuers since February 13, 2008, however,  
7 thousands of ARS investors, including TD Customers, who currently hold ARS have been unable  
8 to sell through the auction process.

9           26.     As of July 20, 2008, TD Customers held hundreds of millions of dollars in illiquid  
10 ARS that they were unable to sell through the auction process.

11                               **Respondent's Role in the ARS Market**

12           27.     To facilitate the auction process, issuers of ARS selected one or more broker-dealers  
13 to underwrite an offering and/or manage an auction process.

14           28.     In many instances, these chosen broker-dealers submitted their own bids to support  
15 the ARS auctions and to prevent the auctions from failing.

16           29.     Respondent did not act as an underwriter, manager, or agent for any issuer of ARS.

17           30.     As a distributing or "downstream" broker-dealer, Respondent did not submit bids in  
18 an effort to support any of the ARS auctions or to prevent them from failing.

19           31.     Respondent also did not hold any significant inventory of ARS in its broker-dealer  
20 house account(s).

21           32.     Respondent acted solely as an agent, both on a solicited and unsolicited basis, for  
22 TD Customers by submitting their bids to purchase and orders to sell ARS.

23           33.     Respondent received revenue, including fees for acting as an agent for customers in  
24 connection with ARS.

1                                    **Respondent's ARS Sales to TD Customers**

2            34.     In soliciting TD Customers to purchase ARS prior to the middle of February 2008,  
3 Respondent's registered representatives made inaccurate comparisons between ARS and other  
4 investments, such as certificates of deposit or money market accounts, telling customers that ARS  
5 were similar investments but with a slightly higher yield.

6            35.     In soliciting TD Customers to purchase ARS prior to the middle of February 2008,  
7 Respondent's registered representatives also did not accurately characterize the investment nature  
8 of ARS since ARS are highly complex securities that are very different from money market funds  
9 or certificates of deposit, as evidenced by, among other things, the dependence of ARS on  
10 successful auctions for liquidity.

11           36.     Respondent's registered representatives also did not provide customers with  
12 adequate and complete disclosures regarding the complexity of the auction process and the risks  
13 associated with ARS, including the circumstances under which an auction could fail.

14           37.     Respondent's registered representatives did not adequately disclose to TD  
15 Customers that the Customer's ability to liquidate the ARS depended on the willingness of other  
16 investors to buy the instruments at an auction.

17           38.     The information described in Paragraphs 34 through 37 was material to TD  
18 Customers.

19           39.     Respondent was aware that its registered representatives marketed ARS to  
20 customers as liquid and as an alternative to cash, certificates of deposit, or money market funds  
21 without adequately disclosing that ARS are complex securities that may become illiquid.

22                                    **III.**

23                                    **CONCLUSIONS OF LAW**

24            The Maine Office of Securities has jurisdiction over this matter pursuant to Maine Uniform Securities  
25 Act, 32 M.R.S.A. §§ 16101 through 16702.

1 By engaging in the acts and conduct set forth in paragraphs II.2 through II.39, Respondent,  
2 in connection with the offer, sale or purchase of a security, made untrue statements of material fact  
3 or omitted to state a material fact necessary in order to make the statements made, in the light of  
4 the circumstances under which they are made, not misleading, in violation of 32 M.R.S.A. §  
5 16501(2).

6 **IV.**

7 **ORDER**

8 On the basis of the Findings of Fact, Conclusions of law, and Respondent's consent to the  
9 entry of this Order,

10 **IT IS HEREBY ORDERED:**

11 1. This Order concludes the investigation by the Maine Office of Securities and any  
12 other action that the Maine Securities Administrator could commence under applicable Maine law  
13 on behalf of Maine as it relates to Respondent, concerning the marketing and sales of ARS by  
14 Respondent, provided, however, that excluded from and not covered by this paragraph are any  
15 claims by the Maine Securities Administrator arising from or relating to the enforcement of this  
16 Order. The Maine Securities Administrator reserves the right to investigate and commence any  
17 proceeding it deems appropriate, in its sole discretion, relating in any way to (a) any Customer who  
18 requests a purchase from Respondent and who purchased Eligible Auction Rate Securities at  
19 Respondent prior to February 13, 2008, but transferred such Eligible Auction Rate Securities away  
20 prior to January 24, 2006; (b) any account owner described in paragraph IV.3(b)(3) of this Order  
21 that was excluded from the definition of Eligible Investor because it had over \$10 million in assets  
22 at Respondent or total assets greater than \$50 million; or (c) any account owner who holds or held  
23 Eligible Auction Rate Securities that were purchased at Respondent or entities acquired by  
24 Respondent's parent companies in an account owned, managed, or advised by or through an  
25 independent registered investment adviser.

2. This Order is entered into solely for the purpose of resolving the referenced multistate investigations, and is not intended to be used for any other purpose.

**Relief for ARS Investors:  
Purchases from ARS Investors**

3. Respondent has agreed to provide liquidity to Eligible Investors, as defined below, by purchasing Eligible Auction Rate Securities, as defined below, that have failed at auction at least once since February 13, 2008, at par, in the manner described below.

a. "Eligible Auction Rate Securities," for the purposes of this Order, shall mean ARS purchased at Respondent on or before February 13, 2008, and that have failed at auction at least once since February 13, 2008. Notwithstanding the foregoing definition, Eligible Auction Rate Securities shall not include ARS that were purchased at Respondent or entities acquired by Respondent's parent companies in accounts owned, managed, or advised by or through independent registered investment advisers; and

b. "Eligible Investors," for the purposes of this Order, shall mean the following current and former account owners who purchased Eligible Auction Rate Securities at Respondent on or before February 13, 2008, did not transfer such Eligible Auction Rate Securities away from Respondent prior to January 24, 2006 (Merger Date)<sup>1</sup>, and held those securities on February 13, 2008:

1. Natural persons (including their IRA accounts, testamentary trust and estate accounts, custodian UGMA and UTMA accounts, and guardianship accounts); or

2. Charities, endowments, or foundations with Internal Revenue Code Section 501(c)(3) status; or

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<sup>1</sup> Respondent was formed as a result of the consolidation of retail brokerage operations of Ameritrade, Inc. and TD Waterhouse Investors Services, Inc. following Ameritrade Holding Corporation's acquisition of TD Waterhouse Group, Inc. on January 24, 2006.  
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1                   3.       Small Businesses and Institutions. For purposes of this provision,  
2       “Small Businesses and Institutions” shall mean the following account owners with  
3       total assets at Respondent of \$10 million or less as of March 13, 2009: trusts;  
4       corporate trusts; corporations; employee pension plans/ERISA and Taft Hartley Act  
5       plans; educational institutions; incorporated not-for-profit organizations; limited  
6       liability companies; limited partnerships; non-public companies; partnerships;  
7       personal holding companies; unincorporated associations; and government and  
8       quasi-government entities:

9                   i.       In calculating total assets at Respondent for the purposes of  
10       paragraph IV.3(b)(3) of this Order, Respondent may include household  
11       accounts;

12                  ii.       If an account owner described within paragraph IV.3(b)(3)  
13       transferred its Eligible Auction Rate Securities away from Respondent prior  
14       to March 13, 2009, then the date of the account owner’s request to transfer  
15       its Eligible Auction Rate Securities was used for determining whether the  
16       account owner had \$10 million or less in assets at Respondent;

17                  iii.       “Small Businesses and Institutions” shall not include broker-  
18       dealers or banks acting as conduits for their customers, or customers that had  
19       total assets of greater than \$50 million as of the date of this Order; and

20                  iv.       In no event was Respondent required by this Order to  
21       purchase more than \$10 million of ARS from any Small Business or  
22       Institution.

23           4.       Respondent offered to purchase, at par plus accrued and unpaid dividends/interest,  
24       from Eligible Investors their Eligible Auction Rate Securities (the “Purchase Offer”). The  
25       Purchase Offer remained open as follows:  
26



1           a.       First Offer Period. For those Eligible Investors with assets at Respondent of  
2       \$250,000 or less as of March 13, 2009, the Purchase Offer remained open for a period of  
3       seventy-five (75) days from the date on which the Purchase Offer was sent ("First Offer  
4       Period"). To the extent that any Eligible Investor transferred their Eligible Auction Rate  
5       Securities away from Respondent before March 13, 2009, then the measurement date for  
6       the \$250,000 threshold was the date on which the transfer was requested by the Eligible  
7       Investor; and

8           b.       Second Offer Period. For those Eligible Investors with assets at Respondent  
9       of more than \$250,000 as of March 13, 2009, the Purchase Offer remained open until at  
10      least March 23, 2010 ("Second Offer Period"), subject to extension pursuant to paragraph  
11      IV.7(b) below. To the extent that any Eligible Investor transferred their Eligible Auction  
12      Rate Securities away from Respondent before March 13, 2009, then the measurement date  
13      for the \$250,000 threshold was the date on which the transfer was requested by the Eligible  
14      Investor.

15       5.       No later than August 10, 2009, Respondent used its best efforts to identify and  
16      provide notice to Eligible Investors of the relevant terms of this Order. Said notice explained what  
17      Eligible Investors must do to accept, in whole or in part, the Purchase Offer. Respondent also  
18      provided written notice of the relevant terms of this Order to any subsequently identified Eligible  
19      Investors.

20       6.       To the extent that any Eligible Investors have not responded to the Purchase Offer  
21      on or before forty-five (45) days before the end of the applicable offer period (defined in  
22      paragraphs IV.4(a) and (b) above), Respondent provided any such Eligible Investor with a second  
23      written notice informing them again of the Purchase Offer, including the date by which the  
24      applicable offer period ended. Respondent also informed them of the relevant terms of this Order  
25      and any other material issues regarding the Eligible Investors' rights.

1           7.       Eligible Investors could accept the Purchase Offer by notifying Respondent, as  
2 described in the Purchase Offer, at any time before midnight, Eastern Time, on the last day of the  
3 applicable offer period. An acceptance had to be received by Respondent prior to the expiration of  
4 the applicable offer period, or any extension thereof, to be effective. The purchases were  
5 conducted as follows:

6           a.       Purchases Relating to Eligible Investors to Whom the First Offer Period  
7 Applies. For those Eligible Investors to whom the First Offer Period applies, and who  
8 accept the Purchase Offer within the First Offer Period, Respondent purchased their  
9 Eligible Auction Rate Securities no later than five (5) business days following the  
10 expiration of the First Offer Period;

11           b.       Purchases Relating to Eligible Investors to Whom the Second Offer Period  
12 Applies. For those Eligible Investors to whom the Second Offer Period applies, and who  
13 accept the Purchase Offer within the Second Offer Period, Respondent purchased their  
14 Eligible Auction Rate Securities as soon as practicable and, in any event, no later than five  
15 (5) business days following the expiration of the Second Offer Period (the "Purchase  
16 Deadline"). Respondent used its best efforts to effectuate all purchases under this  
17 paragraph by March 31, 2010;

18           c.       An Eligible Investor could revoke his/her/its acceptance of Respondent's  
19 Purchase Offer at any time up until Respondent purchases such Eligible Investor's Eligible  
20 Auction Rate Securities or provides notice of Respondent's intent to purchase such Eligible  
21 Auction Rate Securities.

22           d.       Respondent's obligation under this paragraph to those Eligible Investors  
23 who custodied their Eligible Auction Rate Securities away from Respondent as of the date  
24 of this Order was contingent on: (1) Respondent receiving reasonably satisfactory assurance  
25 from the financial institution currently holding the Eligible Investor's Eligible Auction Rate  
26 Securities that the bidding rights associated with such Eligible Auction Rate Securities will

1 be transferred to Respondent, and (2) transfer of the Eligible Auction Rate Securities back  
2 to Respondent; and

3 e. Respondent used its best efforts to identify, contact, and assist any Eligible  
4 Investor who has transferred the Eligible Auction Rate Securities out of Respondent's  
5 custody in returning such Auction Rate Securities to Respondent's custody, and did not  
6 charge such Eligible Investor any fees relating to or in connection with the return to  
7 Respondent or custodianship by Respondent of such Eligible Auction Rate Securities.

8 8. In the event that Respondent received a purchase request from a customer who  
9 purchased Eligible Auction Rate Securities at Respondent prior to February 13, 2008, but who  
10 transferred such Eligible Auction Rate Securities away from Respondent prior to the Merger Date,  
11 Respondent engaged in good faith negotiations with such customer in an attempt to resolve the  
12 customer's request. Respondent promptly notified a representative specified by the North  
13 American Securities Administrators Association ("NASAA representative") of all such requests.

14 9. By July 22, 2009, Respondent established: (a) a dedicated toll-free telephone  
15 assistance line, with appropriate staffing, to provide information and to respond to questions  
16 concerning the terms of this Order; and (b) a public Internet page on its corporate Website(s), with  
17 a prominent link to that page appearing on Respondent's relevant homepage(s), to provide  
18 information concerning the terms of this Order and, via an e-mail address or other reasonable  
19 means, to respond to questions concerning the terms of this Order. Respondent maintained the  
20 telephone assistance line and Internet page through at least the last day of the Purchase Deadline.

#### 21 **Relief for Eligible Investors Who Sold Below Par**

22 10. No later than seventy-five (75) days from July 20, 2009, Respondent used its best  
23 efforts to identify any Eligible Investor who sold Eligible Auction Rate Securities below par  
24 between February 13, 2008 and July 20, 2009 ("Below Par Seller") and paid them the difference  
25 between par and the price at which the Eligible Investor sold the Eligible Auction Rate Securities,  
26

1 plus reasonable interest thereon. Respondent promptly paid any such Below Par Seller identified  
2 thereafter.

### 3 **Reimbursement for Related Loan Expenses**

4 11. As soon as practicable, but not later than seventy-five (75) days from July 20, 2009,  
5 Respondent used its best efforts to identify Eligible Investors who took out loans from Respondent  
6 after February 13, 2008, that were secured by Eligible Auction Rate Securities that were not  
7 successfully auctioning at the time the loan was taken out from Respondent and paid interest  
8 associated with the auction rate securities based portion of those loans in excess of the total interest  
9 and dividends received on the auction rate securities during the duration of the loan. Respondent  
10 reimbursed such customers promptly for the excess expense, plus reasonable interest thereon.

### 11 **Arbitration**

12 12. Respondent consents to participate in a special arbitration (Arbitration) for the  
13 exclusive purpose of arbitrating any Eligible Investor's consequential damages claim arising from  
14 their inability to sell Eligible Auction Rate Securities.

15 13. Respondent notified Eligible Investors of the Arbitration process under the  
16 following terms:

17 a. The Arbitration will be conducted by a single public arbitrator (as defined by  
18 Section 12100(u) of the FINRA Code of Arbitration Procedures for Customer Disputes);

19 b. Respondent will pay all applicable forum and filing fees. Eligible Investors  
20 may seek recovery for their attorneys' fees to the same extent that they may under standard  
21 arbitration procedures;

22 c. Any Eligible Investor who chooses to pursue such claims in the Arbitration  
23 shall bear the burden of proving that they suffered consequential damages and that such  
24 damages were caused by their inability to access funds invested in Eligible Auction Rate  
25 Securities;

1           d.     In the Arbitration, Respondent shall be able to defend itself against such  
2     claims, provided, however, that Respondent shall not contest liability for the illiquidity of  
3     the underlying ARS or use as part of its defense any decision by an Eligible Investor not to  
4     borrow money from Respondent;

5           e.     All customers, including but not limited to Eligible Investors who avail  
6     themselves of the relief provided pursuant to this Order, may pursue any remedies against  
7     Respondent available under the law. However, Eligible Investors that elect to utilize the  
8     Arbitration process set forth above are limited to the remedies available in that process and  
9     may not bring or pursue a claim relating to Eligible Auction Rate Securities in another  
10    forum.

11           All terms used but not defined herein shall have the meaning assigned to them by the Maine  
12    Uniform Securities Act, 32 M.R.S.A. §§ 16101 through 16702.

### 13                                   **Reporting and Meetings**

14           14.    Within forty-five (45) days of the end of each month beginning with a report  
15    covering the month ended after the date of this Order and continuing through and including a report  
16    detailing the month ended March 31, 2010, Respondent will submit a monthly written report to the  
17    NASAA representative detailing its progress with respect to its obligations pursuant to this Order.

18           15.    Respondent offered to confer with the NASAA representative on a quarterly basis to  
19    discuss Respondent's progress to date.

20           16.    The reporting or meeting deadlines set forth above may be amended with written  
21    permission from the NASAA representative.

### 22                                   **Compliance Measures**

23           17.    Respondent is ordered to provide the NASAA representative with a list of  
24    Customers, (delineated and separated by state residency and including amounts of Eligible Auction  
25  
26

Rate Securities then held at Respondent) who receive notice of the Offer contained in paragraphs IV.3 and IV.4 of this Order promptly after such notice is sent.

18. Respondent is ordered to provide the NASAA representative with a list of Below Par Sellers (delineated and separated by state residency and including amounts of Eligible Auction Rate Securities) who are eligible for relief pursuant to paragraph IV.10 of this Order promptly after the First Offer Period ends.

19. Respondent is ordered to provide the NASAA representative with a list of Customers who took loans from Respondent secured by Eligible Auction Rate Securities (delineated and separated by state residency and including amounts of Eligible Auction Rate Securities and original loan amounts) who are entitled to relief under paragraph IV.11 of this Order promptly after the First Offer Period ends.

Respondent is ordered to comply with the Maine Uniform Securities Act, 32 M.R.S.A. §§ 16101 through 16702 and with the regulations adopted by the Maine Office of Securities.

20. For any person or entity not a party to this Order, unless expressly stated herein, this Order does not limit or create any private rights or remedies against Respondent, limit or create liability of Respondent, or limit or create defenses of Respondent to any claims.

21. Nothing herein shall preclude Maine, its departments, agencies, boards commissions, authorities, political subdivisions, and corporation (collectively "State Entities"), other than the Maine Office of Securities and only to the extent set forth in paragraph IV.1, and the officers, agents, or employees of State Entities from asserting any claims, causes of action, or applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief against Respondent in connection with the marketing and sale of ARS at Respondent.

22. This Order is binding in Maine.

1           23.     Should the Maine Office of Securities determine that Respondent failed to comply  
2 with any or all provisions of this Order, the Maine Securities Administrator may impose sanctions  
3 and costs and seek other appropriate relief subject to the Respondent's rights to notice and a  
4 hearing pursuant to 32 M.R.S.A. §§ 16604.

5           24.     This Order and any dispute related thereto shall be construed and enforced in  
6 accordance with, and governed by, the laws of Maine without regard to any choice of law  
7 principles.

8           25.     This Order shall be binding upon Respondent and its successors and assigns as well  
9 as on successors and assigns of relevant affiliates with respect to all conduct subject to the  
10 provisions above and all future obligations, responsibilities, undertakings, commitments,  
11 limitations, restrictions, events, and conditions.

12           DATED this 13<sup>th</sup> day of September, 2010.

13                               BY ORDER OF MAINE SECURITIES ADMINISTRATOR

14                               Judith M. Shaw  
15                               Judith M. Shaw

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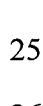
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